

May 22, 2023

VIA: ECF



Hon. Judge Hector Gonzalez, U.S.M.J.
United States District Court
Eastern District of New York
255 Cadman Plaza East
Brooklyn, NY 11201

Re: **Defendants' Unopposed Pre-Motion Conference Request concerning Plaintiff's Attorney's Motion to Withdraw as to missing Plaintiff CHUNGGUO JIN and Defendant's Motion to Dismiss with Prejudice against the missing/pro se Plaintiff CHUNGGUO JIN**
1:17-cv-05570-HG, Du v. Ma Roo, Inc., et. al.

Your honor,

We represent the Defendants in the above-captioned matter. Pursuant to your order dated April 4, 2023, filed on the ECF as document number 51, we filed a letter dated April 18, 2023 to explain that a resolution of the claims asserted by Plaintiff Chungguo Jin ("Plaintiff Jin") is necessary before making an offer of judgment. We now write to request a Pre-Motion Conference concerning the Plaintiff's Attorneys Troy Law's motion to withdraw as to missing Plaintiff Jin and also Defendants' motion to dismiss Plaintiff Jin with prejudice, pursuant to your Honor's Individual Rules Section IV.A.2.

Per the Order (ECF No. 51), Plaintiffs' counsel Troy Law has filed the motion to withdraw as counsel for Plaintiff Jin on April 25, 2023, and also filed the declaration on April 27, 2023. The order states that "[i]f Mr. Jin fails to file a response with the Court by May 16, 2023, then the Court will likely dismiss his claims with prejudice, pursuant to Rule 41(b)," and Plaintiff Jin has failed to do so to this date, May 22, 2023.

Anticipating that the Court would grant the Troy Law's motion to withdraw as to the Plaintiff Jin, Defendants intend to file a motion to dismiss against the missing Plaintiff Jin, so that the Defendants and the remaining Plaintiffs may settle this matter via the offer of judgment, as discussed between the parties at the court-ordered mediation on March 10, 2023.

Defendants can prepare and file the motion to dismiss within a week of the Court's order including the grant of Troy Law's motion to withdraw, unless the Court exercises its discretion to construe this pre-motion letter as the motion itself per the Individual Rules Section IV.A.11. Should the Court require a Pre-Motion Conference, we are available on the following dates and times:

Any time on May 31, 2023; any time on June 1, 2023; and after 1PM on June 2, 2023

The missing Plaintiff Jin has already failed to file any response by May 16, 2023 as directed by the Order (ECF No. 51). Together with the Troy Law's motion to withdraw explaining the circumstances of the subject Plaintiff's extended absence and lack of communication despite Troy Law's efforts to contact the subject Plaintiff, the anticipated pro se Plaintiff Jin has failed to prosecute and thus subject to involuntary dismissal with prejudice under FRCP Rule 41(b), as explained and warned to the missing Plaintiff. As such, Defendant would like to move the court to

dismiss this case against the Plaintiff Jin, so that the Defendants may move forward with the settlement of this matter as discussed at the mediation session held on March 10, 2023. Our office has drafted the offer of judgment and is ready to serve upon the remaining Plaintiffs, for which acceptance is anticipated.

In light of the circumstances detailed above, Defendants respectfully request that the court enters an order to:

- (a) Grant the Troy Law's motion to withdraw as counsel for the Plaintiff Chungguo Jin pursuant to Local Rule 1.4;
- (b) Grant the Defendant's motion to dismiss against Plaintiff Chungguo Jin with prejudice pursuant to Rule 41(b); and
- (c) For such further relief as this Court may deem just and proper.

We thank the Court for its time and consideration in this matter.

Sincerely,

/s/John C. Kim

John C. Kim, Esq.

The Law Office of John C. Kim, P.C.

Attorneys for Defendants